United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 08-40**
	)	**Issued: May 15, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Hillsboro, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2007 appellant filed a timely appeal from the April 23 and September 11, 2007 merit decisions of the Office of Workers' Compensation Programs, which terminated her compensation and denied her claim of consequential injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained an injury consequential to her June 18, 2003 employment injury; and (2) whether the Office properly terminated her compensation for the accepted employment injury.

FACTUAL HISTORY

On the prior appeal,[1] the Board noted that appellant, a rural carrier, sustained a puncture wound in her right calf on June 18, 2003 when someone shot her with a BB gun. The Office

[1] Docket No. 05-1944 (issued January 19, 2006).

accepted her claim, and she returned to regular duty without restrictions on September 22, 2003. Dr. John P. Zisko and Dr. John C. Linz, associates and attending orthopedic surgeons, supported that appellant developed right plantar fasciitis and peroneal tendinitis as a consequence of the accepted puncture wound. They reported that these conditions in turn contributed to a minor right ankle inversion injury when appellant slipped on ice in February 2004 and a minimally displaced right lateral malleolus fracture, right knee chondromalacia and left rotator cuff strain when her knee gave out a few days later. Dr. Richard T. Sheridan, an orthopedic surgeon and Office referral physician, disagreed, but he offered no rationale to support his stated conclusion. Because the Office undertook development of this evidence, the Board remanded the case for a supplemental report from Dr. Sheridan. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On February 21, 2006 Dr. Sheridan explained that appellant did not have the required clinical findings to support a diagnosis of plantar fasciitis or peroneal tendinitis. He also explained that appellant's puncture wound had healed and that there was no evidence on clinical examination of any muscle atrophy or weakness or any neurological deficits that could have been responsible for her fall in February 2004.

On March 28, 2006 the Office denied appellant's claim of consequential injury. On June 23, 2006 a hearing representative set aside this decision, finding that the Office's questions to Dr. Sheridan were inadequate and that further explanation from Dr. Sheridan was warranted.

On July 17, 2006 Dr. Sheridan reported that altered gait from a right leg wound could result in peroneal tendinitis but could not result in plantar fasciitis. He reported that Dr. Zisko's findings were different from his but would support that appellant developed plantar fasciitis and peroneal tendinitis. Dr. Sheridan reported that he reviewed the emergency room reports and the reports of the attending physicians immediately following appellant's falls in February 2004. It was his opinion that the BB shot wound, plantar fasciitis or peroneal tendinitis did not cause or contribute to those falls. Dr. Sheridan stated: "My opinions of February 21, 2006 have not changed."

The Office found a conflict in medical opinion and referred appellant, together with the record and a statement of accepted facts, to Dr. Steven J. Goldfarb, a Board-certified orthopedic surgeon, selected as the impartial medical referee. On October 20, 2006 Dr. Goldfarb related appellant's history and current symptoms. He described his findings on physical examination and reviewed appellant's medical record. Dr. Goldfarb found that appellant's diagnoses included a puncture wound to the posterior aspect of the right calf, arthritis of both knees, a contusion to the left shoulder and a right ankle fracture. He found no evidence, other than subjective complaints, to support the diagnosis of plantar fasciitis or peroneal tendinitis:

> "The puncture wound to [appellant's] right calf certainly would not be a source of peroneal tendinitis. This is not even in the anatomical location of the peroneal tendon. [Appellant's] plantar fasciitis may be clinically present; however, in my opinion, this is unrelated to her industrial injury of June 18, 2003. X-rays taken shortly after that injury already showed well-established calcaneal spur signifying that the plantar fasciitis was most likely present prior to the industrial injury of June 18, 2003.

"I do not feel that [appellant] has any residuals from the work-related injury of June 18, 2003 at this time. The work-related injury was a puncture wound and that is the only accepted work-related injury. I do not feel that any of the other injuries and/or conditions are related in any way to her injury of June 18, 2003. I cannot state that her plantar fasciitis would have been caused by a posterior calf wound. According to the operative report, the BB was in the subcutaneous tissue and did not even violate the fasciae or deeper musculature. Therefore, this would not be a contributing factor to any tendinitis, specifically the peroneal tendon. In my opinion, the plantar fasciitis was preexisting based on the calcaneal spur seen on x-ray taken shortly after the work incident.

"Once again, I do not feel that the conditions of plantar fasciitis and peroneal tendinitis are related to the June 18, 2003 injury. Therefore, the ankle fracture that occurred in February 2004 is unrelated to the June 18, 2003 injury. Similarly, the left shoulder injury is also unrelated. In addition, her knee MRI [magnetic resonance imaging] [scan] show severe degenerative arthritis. In my opinion, her knee condition is degenerative in nature and unrelated to any type of industrial injury.

"In my opinion, there is no relationship whatsoever to [appellant's] fall on February 6, 2004 and the industrial accident of June 18, 2003. While [she] may have developed plantar fasciitis and/or peroneal tendinitis, in my opinion, this is unrelated to the June 18, 2003 injury. The BB wound was superficial in nature and certainly would not have caused either of those conditions.

"Once again, [appellant] sustained a superficial posterior wound from the BB shot. This certainly should not have caused an altered gait for more than two or three weeks following surgery and this would have been due to pain only. This residual altered gait should have had no effect on her plantar fasciitis or peroneal tendinitis. After that period of time, there should have been no residual altered gait. As noted, there is certainly evidence in the medical record to indicate that the plantar fasciitis predates the work injury of June 18, 2003."

In a decision dated April 23, 2007, following proper notice, the Office terminated appellant's compensation for the accepted puncture wound. The Office found that Dr. Goldfarb's opinion represented the weight of the medical evidence and established that the wound had resolved. The Office further found that Dr. Goldfarb had sufficiently established that appellant's peroneal tendinitis and plantar fasciitis were not causally related to the June 18, 2003 employment incident.

In a decision dated September 11, 2007, an Office hearing representative affirmed. Appellant's attorney argues on appeal that the September 11, 2007 decision is contrary to fact and law.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[3] A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[4]

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[5] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[6]

ANALYSIS -- ISSUE 1

To resolve the conflict between appellant's attending physicians and the Office referral physician, the Office properly referred appellant to an impartial medial specialist under 5 U.S.C. § 8123(a). The Office provided Dr. Goldfarb, a Board-certified orthopedic surgeon, with appellant's record and a statement of accepted facts so that he could base his opinion on a complete and accurate history. His opinion is also well rationalized. Dr. Goldfarb explained that a puncture wound to the posterior of appellant's right calf would not be a source of peroneal tendinitis, as the peroneal tendon was not anatomically located there. He noted that the operative report showed that the BB was in the subcutaneous tissue and did not violate the fasciae or deeper musculature, so this would not be a contributing factor to any tendinitis, specifically of the peroneal tendon. Dr. Goldfarb observed that x-rays taken shortly after that injury showed a well-established calcaneal spur, signifying that plantar fasciitis was most likely present prior to the June 18, 2003 injury. Further, he explained that a superficial wound should not have caused an altered gait for more than two or three weeks following surgery, which should have had no effect on appellant's plantar fasciitis or peroneal tendinitis. Dr. Goldfarb therefore found no relationship between the June 18, 2003 puncture wound and appellant's fall in February 2004, her right ankle fracture, her arthritic knees or her contused left shoulder.

---

[2] 5 U.S.C. § 8102(a).

[3] *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] 5 U.S.C. § 8123(a).

[6] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds that the opinion of the impartial medical specialist is based on a proper factual and medical history and is sufficiently well rationalized that it is entitled to special weight. As the weight of the medical opinion evidence establishes that appellant sustained no injury consequential to her accepted puncture wound on June 18, 2003, the Board will affirm the Office's April 23 and September 11, 2007 decisions on the issue of consequential injury.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[7] After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[8]

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained a puncture wound to the right calf on June 18, 2003. The Office therefore has the burden of proof to justify the termination of compensation for this medical condition. Appellant's attending physicians do not argue that she still suffers from the wound. An operation removed the BB shot and the wound healed. The only question was whether the wound in some way caused a consequential injury. Dr. Goldfarb, the impartial medical specialist, resolved that question in the negative. On the issue of whether the wound had resolved, he noted that the wound was superficial and was the only accepted medical condition. Dr. Goldfarb examined appellant and found that she had no residuals. He explained that the puncture wound should not have caused an altered gait for more than two or three weeks after surgery, which should have had no effect on her plantar fasciitis or peroneal tendinitis. As the clear weight of the medical evidence establishes that the June 18, 2003 puncture wound has resolved, the Board will affirm the termination of compensation for that medical condition. The Office has met its burden of proof.

CONCLUSION

The Board finds that appellant did not sustain an injury consequential to her June 18, 2003 employment injury. The Board also finds that the Office properly terminated compensation for the accepted puncture wound.

[7] *Harold S. McGough*, 36 ECAB 332 (1984).

[8] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

ORDER

IT IS HEREBY ORDERED THAT the September 11 and April 23, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board